IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

Crl.MC.No. 4542 of 2003()

CRRP.69/2003 of II ADDL. SESSIONS COURT, PALAKKAD
ST.614/1999 of CHIEF JUDICIAL MAGISTRATE COURT, PALAKKAD
(CRMP.2255 TO 2257/03)

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PETITIONER: REVISION PETITIONER/ACCUSED

ANANTHA LAKSHNMI,
AGED 39 YEARS,
SREERAM.24/431,
NEW STREET, NOORNI,PALAKKAD-4.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.JACOB SEBASTIAN

RESPONDENTS: RESPONDENT/COMPLAINANT

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1. MALATHY,AGED 46 YEARS,
W/O.EASWARAN,NEW STREET,
NURANI,PALAKKAD.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR
SRI.K.R.RAGHUNATH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 25/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. M.C. No. 4542 OF 2003 C

Dated this the 25th day of July, 2007

O R D E R

Petitioner, a lady, who is the accused in S.T. No.614/1999 on the file of the Chief Judicial Magistrate, Palakkad for an offence punishable under section 138 of the Negotiable Instruments Act, 1881, challenges the common order dated 25.4.2003 in CMP Nos.2255/03, 2256/03 and 2257/03. The cheque in question is for a sum of Rs.1,50,000/- (Rupees one lakh and fifty thousand only). According to the revision petitioner, her defence is one of discharge. After the defence evidence was over, she filed the aforementioned three petitions; one to recall DW1 who is the husband of the petitioner, the 2nd was to summon from the Bank the original cheque as per which the discharge was effected and the 3rd was to receive in evidence a photocopy of the aforesaid cheque by which the discharge was effected. All these petitions were dismissed as per the impugned common order stating, inter alia, that the petitions were filed

for protracting the matter.

2. The revision petitioner having been taken up the plea of discharge right from the stage of the reply notice, the burden was on her to prove the same. No doubt, she could have filed the petition when the case stood posted for defence evidence. But merely because she filed a petition belatedly, she does not deserve to be branded as a procrastinator. If as a matter of fact, the revision petitioner had discharged the loan evidence by the cheque in question it will vitally affect the prosecution. Hence, the court below should have given the revision petitioner an opportunity to re-open the evidence and get the original cheque summoned. If after re-opening the evidence, the Magistrate finds that the attempt of the revision petitioner was to protract the proceedings, she can be adequately penalised while imposing the sentence in the event of conviction. The impugned common order is accordingly set aside and the matter is remitted to the trial court. CMP.Nos.2256/03 and 2257/03 which are the petitions to recall DW1 and to call for the original of the cheque from

the Bank concerned will stand allowed. In case the original cheque reaches the court, then it may not be necessary to consider CMP No.2255/03 in which the request is only to receive the photocopy of the said cheque. The parties shall appear before the trial court on 13.8.07 without any further notice. The court below shall make an earnest endevour to dispose of the matter having regard to the fact that the case was instituted in the year 1991.

This revision was allowed as above.

(V. RAMKUMAR, JUDGE)

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